

No. 12A123

IN THE
SUPREME COURT OF THE UNITED STATES

DANIEL WAYNE COOK,
PETITIONER,

-vs-

CHARLES L. RYAN, Director
Arizona Department of Corrections,
RESPONDENT.

PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

RESPONSE IN OPPOSITION TO APPLICATION FOR A STAY OF EXECUTION
CAPITAL CASE
EXECUTION SCHEDULED AUGUST 8, 2012

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ATTORNEYS FOR RESPONDENT

Cook's motion for stay is based on his pending appeal from the denial of his motion for relief from judgment. Because Cook has failed to make a strong showing that he is likely to succeed on the merits of his pending appeal, and because the public interest weighs strongly against a stay, this Court should deny Cook's request for injunctive relief.

"A preliminary injunction is an 'extraordinary and drastic remedy[.]'" *Munaf v. Geren*, 553 U.S. 674, 689 (2008) (quoting 11A C. Wright, A. Miller, & M. Kane, *Federal Practice and Procedure* § 2948, p. 129 (2d ed. 1995)). A litigant has no inherent right to such an extraordinary remedy. *Winter v. Natural Resources Defense Council*, 555 U.S. 7, 22 (2008). This rule applies in capital cases and a stay is not available as a matter of right. *See Hill v. McDonough*, 547 U.S. 563, 584 (2006).

A petitioner seeking a preliminary injunction must demonstrate: (1) "he is likely to succeed on the merits," (2) "he is likely to suffer irreparable harm in the absence of preliminary relief," (3) "the balance of equities tip in his favor," and (4) "that an injunction is in the public interest." *Winter*, 555 U.S. at 21. The petitioner must clearly show that he is entitled to relief. *Id.* at 22; *Mazurek v. Armstrong*, 520 U.S. 968, 972 (1997) (per curiam).

As set forth in Respondents' Opposition to Cook's certiorari petition, Cook has not made a strong showing that he is likely to succeed on the merits of his pending claims. His claims of ineffective assistance of trial counsel are not substantial, and the Ninth Circuit correctly concluded that the district court did not abuse its

discretion by denying Cook's motion for relief from judgment. Accordingly, he is not entitled to injunctive relief.

A State's interest in finality is compelling, particularly when, as here, a federal court of appeals has issued a mandate denying federal habeas relief. *Calderon v. Thompson*, 523 U.S. 538, 556 (1998). "When lengthy federal proceedings have run their course and a mandate denying relief has issued, finality acquires an added moral dimension. . . . To unsettle these expectations is to inflict a profound injury to the "powerful and legitimate interest in punishing the guilty," [citation omitted], an interest shared by the State and the victims of crime alike. *Id.*

Cook's convictions and death sentences have been carefully reviewed in state and federal court dating back to his direct appeal proceedings in 1992. Cook is responsible for two very brutal, heinous murders. *See State v. Cook*, 821 P.2d 731,752 (Ariz. 1992) ("There is no doubt in our minds that each of these crimes of brutal and senseless torture, sodomy, and murder falls clearly within § 13-703(F)(6), if not at the extreme end of the spectrum."). The State's interest in finality is strong, and additional delay for further review is unwarranted.

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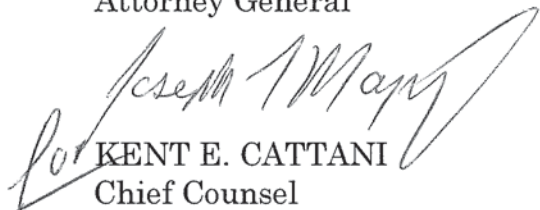
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CONCLUSION

Cook is not entitled to a stay of his execution; the application should be denied.

Respectfully submitted,

THOMAS C. HORNE
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**IN THE
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DANIEL WAYNE COOK,

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STATE OF ARIZONA,

RESPONDENT.

**STATEMENT OF MAILING
AFFIDAVIT OF SERVICE**

RESPONSE IN OPPOSITION TO APPLICATION FOR A STAY OF EXECUTION

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STATE OF ARIZONA }
County of Maricopa } ss.

KENT E. CATTANI, being first duly sworn upon oath, deposes and says:

That he is a member in good standing of the United States Supreme Court Bar. That on August 6, 2012, he emailed a copy of the Response in Opposition to Application for Stay of Execution to the United States Supreme Court. He caused to be shipped by Federal Express, 10 copies of the RESPONSE IN OPPOSITION TO APPLICATION FOR A STAY OF EXECUTION in *Daniel Wayne Cook v. State of Arizona*, No. 12A123, addressed to:

THE HONORABLE WILLIAM K. SUTER
United States Supreme Court
Office of the Clerk
1 First Street, N.E.
Washington, D.C. 20543

And caused to be deposited in a United States Post Office, first-class postage prepaid, three (3) additional copies addressed to:

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That to his knowledge the email and Federal Express shipping and mailing of the Response in Opposition to Application for a Stay of Execution took place on August 6, 2012. All parties required to be served have been served.


KENT E. CATTANI

SUBSCRIBED AND SWORN to before me this 6th day of August, 2012.


Notary Public

My Commission Expires: 8/14/2014

